EXHIBIT 1

Petitioner's Sentence Computation:

Bureau of Prisons Program Statement 5880.28, Sentence Computation Manual CCCA, provides, in pertinent part:

> A prisoner who is serving a term of imprisonment of more than one year, other than a term of imprisonment for the duration of his life . . . shall receive credit toward the service of his sentence, beyond the time served, of fifty-four days at the end of each year of his term of imprisonment, beginning at the end of the first year of the term, unless the Bureau of Prisons determines that, during the year, he has not satisfactorily complied with such institutional disciplinary regulations as have been approved by the Attorney General and issued to the prisoner . . . Credit for the last year or portion of a year of the term of imprisonment shall be prorated and credited within the last six weeks of the sentence.

See **Document f**, Program Statement 5880.28, Sentence Computation Manual CCCA, page 1-40, attached to the Declaration of Stephanie Scannell. Pursuant to this Program Statement, the following details the amount of Good Conduct Time awarded to Petitioner during his incarceration. See **Document e**.

Computation Year 03/26/03[1] through 03/25/04

During this year, Petitioner vested all 54 days of his GCT. Id.

Computation Year 03/26/04 through 3/11/05

Assuming Petitioner does not receive any sanctions which disallow GCT, he is expected to vest 51 days GCT. Id. This number is obtained by a calculation which prorates the portion of the year of time served in accordance with Program Statement 5880.28, Sentence Computation Manual, CCCA, and is explained in the next section in further detail. See **Document 1f**, pp. 1-44 to 1-49.

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[1] March 26, 2003 is obtained by using the date sentence computation began (April 2, 2003) minus seven (7) days to account for jail credit time.

Therefore, Petitioner's total GCT: 54 + 51 = 105 days total GCT. See **Document e.**

Calculation of Amount of GCT Awarded to Petitioner Each Year:

The number of days of GCT awarded to Petitioner each year was calculated according to Program Statement 5880.28, Sentence Computation Manual CCCA, and is explained in detail below. See **Document f.**

Assuming Petitioner vested all possible GCT

Start: 06/24/05 (full term expiration date), as of 03/26/03 serving a 822 day sentence (2yr, 3mo).

Year One: Petitioner serves one full year from 03/26/03 to 03/25/04, and is then awarded with 54 days GCT. This changes his release data to the following:

5/1/05 (new release date), as of 03/25/04, with 402 days left on sentence.[2]

Year Two (Hypothetical): If Petitioner served another full year from 03/26/04 to 03/25/05, and was awarded with 54 days GCT, it would change his release date to the following:

03/08/05 (new release date), as of 03/25/05.

Because the last hypothetical calculation is impossible, "if the amount of time remaining on the sentence is less than a year, a prorated amount of Good Conduct Time will be entered . . . This also includes shorter sentences up to and including a sentence of 417 days. . .which do not earn the full amount of 54 GCT days, but earn a lesser prorated amount." See **Document f**, p. 1-61B(f). Therefore, Petitioner's GCT is prorated after 03/25/04. This calculation is detailed below, in accordance with Program Statement 5880.28, Sentence Computation Manual CCCA. Id. at pp. 1-44 to 1-49.

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[2] June 24, 2005 minus 54 days equals May 1, 2005. Likewise, 822 total days on sentence minus 366 (leap year) days already served, minus 54 days GCT vested, equals 402 days remaining on sentence.

As of 3/25/04, Petitioner had 402 days left on his sentence.

402 x .148 = 59 days GCT (54 / 365 = .148)
402 - 59 = 343
343 x .148 = 50.7 (50 days GCT) [3]

Id. at pp. 1-45 to 1-47.

Therefore, the number of GCT days awarded for the prorated term will fall somewhere between 50 and 59 days. To find the exact number, the following calculation is done until the answer repeats. The repeating answer is the number of GCT days earned on the prorated term.

402 - 50 = 352, 352 x .148 = 52.0 (52 days GCT)
402 - 51 = 351, 351 x .148 = 51.9 (51 days GCT)
402 - 52 = 350, 357 x .148 = 51.8 (51 days GCT)
402 - 53 = 349, 349 x .148 = 51.6 (51 days GCT)

Id. at pages 1-45 to 1-48.

Since 51 was the repeating answer, the number of GCT days for the prorated term was calculated to be 51, in accordance with the calculation set forth in Program Statement 5880.28, Sentence Computation Manual CCCA,. Therefore, after serving one full year, Petitioner's release date was 5/1/05 (new release date), as of 03/25/04, with 401 days left on sentence. Providing there is no loss of GCT due to disciplinary sanctions, Petitioner's release date is correctly calculated to be 3/11/05 (May 1, 2005 minus 51 days equals March 11, 2005).

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[3] Because the BOP awards GCT based on days (not award hours or portions of days), all calculations concerning GCT do not take fractions into account, and are rounded down to obtain the nearest full day.

EXHIBIT 2

Westlaw.

53 Fed.Appx. 338

(Cite as: 53 Fed.Appx. 338, 2002 WL 31845147 (6th Cir.(Mich.)))

This case was not selected for publication in the Federal Reporter.

NOT RECOMMENDED FOR FULL--TEXT PUBLICATION

Sixth Circuit Rule 28(g) limits citation to specific situations. Please see Rule 28(g) before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court.

Please use FIND to look at the applicable circuit court rule before citing this opinion. Sixth Circuit Rule 28(g). (FIND CTA6 Rule 28.)

United States Court of Appeals,
Sixth Circuit.

Terrence M. BROWN, Petitioner-Appellant,
v.
John R. HEMINGWAY, Warden; John Ashcroft, U.S. Attorney, Respondents-Appellees.

No. 02-1948.

Dec. 16, 2002.

Before MERRITT and DAUGHTREY, Circuit Judges; and RUSSELL, District Judge. [FN*]

FN* The Honorable Thomas B. Russell, United States District Judge for the Western District of Kentucky, sitting by designation.

ORDER

**1 Terrence Brown, a pro se federal prisoner, appeals from a district court judgment denying Brown's petition for a writ of habeas corpus. 28 U.S.C. § 2241. Brown also moves for release pending appeal. The appeal has been referred to a panel of the court pursuant to Rule 34(j), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R.App. P. 34(a).

Brown challenges the Bureau of Prisons' calculation of his good time credit. Brown *339 argues that he should receive a credit of 15% of his 57 month sentence, or 259 days. The Bureau follows the language of the statute and grants 54 days of credit for each year actually served. *See* 18 U.S.C. § 3624(b)(1). Therefore, the Bureau will credit Brown with 233 days.

The district court held that the Bureau's interpretation of the statute was reasonable. The court relied upon a published Ninth Circuit case and an unpublished Sixth Circuit case. *See* *Pacheco-Camacho v. Hood*, 272 F.3d 1266, 1270-71 (9th Cir.2001), *cert. denied*, --- U.S. ----, 122 S.Ct. 2313, 152 L.Ed.2d 1067 (2002); *Williams v. Lamanna*, No. 01-3198, 2001 WL 1136069, at *1, 20 Fed.Appx. 360 (6th Cir. Sept.19, 2001) (unpub. dec.).

We conclude that the district court properly denied Brown's petition. *Pacheco-Camacho* and *Williams* are persuasive authority on this point. Brown refers to various Bureau regulations that utilize the 15% figure. But the language of the statute uses 54 days as the basis for credit, not the 15% figure. The Bureau's interpretation is reasonable in light of the statutory language.

Accordingly, the motion for release pending appeal is denied, and the district court's judgment is affirmed under Rule 34(j)(2)(C), Rules of the Sixth Circuit.

53 Fed.Appx. 338, 2002 WL 31845147 (6th Cir.(Mich.))

END OF DOCUMENT

EXHIBIT 3

Westlaw.

20 Fed.Appx. 360

(Cite as: 20 Fed.Appx. 360, 2001 WL 1136069 (6th Cir.(Ohio)))

H

This case was not selected for publication in the Federal Reporter.

NOT RECOMMENDED FOR FULL--TEXT PUBLICATION

Sixth Circuit Rule 28(g) limits citation to specific situations. Please see Rule 28(g) before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court.

Please use FIND to look at the applicable circuit court rule before citing this opinion. Sixth Circuit Rule 28(g). (FIND CTA6 Rule 28.)

United States Court of Appeals,
Sixth Circuit.

Earlus L. WILLIAMS, Petitioner-Appellant,
v.
John LAMANNA, Warden, Respondent-Appellee.

No. 01-3198.

Sept. 19, 2001.

Federal prisoner, who was convicted of possession with intent to distribute cocaine and possession of firearm in relation to drug-trafficking offense, petitioned for habeas corpus relief. The District Court dismissed petition. Prisoner appealed. The Court of Appeals held that prisoner's good time credit was based on time actually served, not sentence imposed.

Affirmed.

West Headnotes

Prisons 15(4)
310k15(4) Most Cited Cases

Under statute permitting inmate to be awarded 54 days of good time credit per year, credit was based on time actually served in prison by inmate, not time that he might potentially serve, and therefore inmate was not entitled to credit based on entire 19-year sentence imposed. 18 U.S.C.A. § 3624(b)(1).

***360** Before GUY and MOORE, Circuit Judges; HULL, District Judge. [FN*]

FN* The Honorable Thomas G. Hull, United States District Judge for the Eastern District of Tennessee, sitting by designation.

ORDER

****1** Earlus L. Williams, a pro se federal prisoner, appeals a district court judgment dismissing his petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2241. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R.App. P. 34(a).

In 1991, Williams was convicted of possession with the intent to distribute cocaine and possession of a firearm in relation to a drug trafficking offense. He was sentenced to 228 months of imprisonment. Williams challenged the calculation of his good conduct time under 18 U.S.C. § 3624(b)(1). The district court dismissed the petition as meritless. In his timely appeal, Williams continues to challenge the calculation of his good conduct time.

The district court's judgment is reviewed de novo. *See Charles v. Chandler*, 180 F.3d 753, 755 (6th Cir.1999).

Upon review, we affirm the district court's judgment. Williams alleged the phrase "may receive credit toward the service of [his] sentence, beyond the time served" found in § 3624(b) should be interpreted to allow him good time conduct credits for the entirety of the sentence that was imposed upon him rather than for the actual time of incarceration. Williams claims that he is entitled to 1,026 days of good conduct time rather than the 894 days calculated by the Bureau of Prisons.

***361** Under § 3624(b), an inmate may be awarded 54 days of good time credit per year only "at the end of each year of the prisoner's term of imprisonment ... subject to determination by the Bureau of Prisons that, during that year, the prisoner has displayed exemplary compliance with the institutional disciplinary regulations." 18 U.S.C. § 3624(b)(1); *see United States v. Martin*, 100 F.3d 46, 47 n. 1 (7th Cir.1996).

The statute clearly states that good conduct time is awarded on time served by the inmate, not on the time that might potentially be served by the inmate. The record shows that for each year that Williams has served, he has received 54 days of good conduct time, thus reducing the amount of time he will actually serve. Because the number of years that Williams actually serves will be less than the imposed nineteen-year sentence, Williams is not entitled to 1,026 days of good conduct time. The Bureau of Prisons correctly

calculated Williams's good time conduct as 894 days based on the number of years he will in fact serve in prison, rather than on the imposed nineteen-year sentence.

Accordingly, we affirm the district court's judgment. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

20 Fed.Appx. 360, 2001 WL 1136069 (6th Cir.(Ohio))

END OF DOCUMENT

EXHIBIT 4

10

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DIANA WEBB
v.

PRISONER
CASE NO. 3:03CV961(PCD)(JGM)

KUMA DEBOO and
KATHLEEN HAWK-SAWYER

RULING AND ORDER

The petitioner, Diana Webb ("Webb"), is currently confined at the Federal Prison Camp in Pekin, Illinois. She filed this petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2241, while she was confined at the Federal Correctional Institution in Danbury, Connecticut. For the reasons that follow, the petition is denied.

Procedural Background

On March 9, 1998, Webb was sentenced in the United States District Court for the Western District of Missouri to a total effective sentence of 150 months of imprisonment followed by a five year term of supervised release. She was credited for 284 days of time served prior to sentencing.

Webb has been credited with 54 days of good time credit for each of six years: 5/29/97-5/28/98; 5/29/98-5/28/99; 5/29/99-5/28/00; 5/29/00-5/28/01; 5/29/01-5/28/02; and 5/28/02-5/28/03. Bureau of Prison ("BOP") projections, assuming Webb will continue to receive the maximum of 54 days of good time credit for each

full year yet to be served and a pro-rated 48 days of good time credit for the final year, show her release date as April 19, 2008.[1]

Discussion

Since the enactment of the Judiciary Act of 1789, the federal court in the district in which a prisoner is incarcerated has been authorized to issue a writ of habeas corpus if the prisoner was in custody under the authority of the United States. See Triestman v. United States, 124 F.3d 361, 373 (2d Cir. 1997). Today, this authority is codified at 28 U.S.C. § 2241(c)(3). In 1948, however, Congress enacted 28 U.S.C. § 2255. This statute "channels collateral attacks by federal prisoners to the sentencing court (rather than to the court in the district of confinement) so that they can be addressed more efficiently." Id.

Currently, "[a] motion pursuant to [section] 2241 generally challenges the *execution* of a federal prisoner's sentence, including such matters as the administration of parole, computation of a prisoner's sentence by prison officials, prison disciplinary actions, prison transfers, type of detention and prison conditions." Jiminian v. Nash, 245 F.3d 144, 146 (2d Cir. 2001)(citing Chambers v. United States, 106 F.3d 472, 474-75 (2d

[1]Webb also is scheduled to receive a one-year sentence reduction for completion of the BOP residential drug and alcohol rehabilitation program. This time is not reflected in the calculations used in this ruling.

Cir. 1997) (describing situations where a federal prisoner would properly file a section 2241 petition)). A section 2255 motion, on the other hand, is considered "the proper vehicle for a federal prisoner's challenge to [the imposition of] his conviction and sentence." Id. at 146-47. Thus, as a general rule, federal prisoners challenging the imposition of their sentences must do so by a motion filed pursuant to section 2255 rather than a petition filed pursuant to section 2241. See Triestman, 124 F.3d at 373.

In her section 2241 petition, Webb challenges the calculation of good time credit, an issue relating to the execution of her sentence. Thus, the petition properly was filed pursuant to section 2241.

Good time credit is awarded pursuant to 18 U.S.C. §3624(b)(1), which provides:

> [A] prisoner who is serving a term of imprisonment of more than one year . . . may receive credit toward the service of the prisoner's sentence, beyond the time served, of up to 54 days at the end of each year of the prisoner's term of imprisonment, beginning at the end of the first year of the term, subject to determination by the Bureau of Prisons that, during that year, the prisoner has displayed exemplary compliance with institutional disciplinary regulations. . . . Credit that has not been earned may not later be granted. Subject to paragraph (2), credit for the last year of portion of a year of the term of imprisonment shall be prorated and credited within the last six weeks of the sentence. . . .

Webb argues that the BOP has incorrectly calculated the

maximum amount of good time credit as 588 days, rather than 675 days, the number of days equivalent to fifteen percent of her 150 month sentence. She appears to contend that the BOP should award a total amount of good time credit based upon the length of the sentence imposed and then reduce that total by up to 54 days per year if she has not complied with the requirements of the statute during a particular year of her sentence.

The Ninth Circuit has addressed this exact argument. See Pacheco-Camacho v. Hood, 272 F.3d 1266 (9th Cir. 2001), cert. denied, 535 U.S. 1105 (2002). In that case, the inmate argued that he should have received the full 54 days credit on his sentence of one year and one day, rather than the 47 days resulting from the pro-ration calculation performed by the BOP. He claimed that the reference to "term of imprisonment" in the statute required the BOP to base the calculation of good time credit on the length of the sentence imposed regardless of the time actually served. The court rejected this argument. The court noted the references in the statute to individual years of the term of imprisonment and that fact that, for sentences exceeding one year and one day, the prisoners do not receive any good time credit until they have complied with prison regulations for an entire year. The court concluded that accepting the prisoner's argument would result in a windfall for a prisoner during his last year of imprisonment-he would receive a full 54 days good time credit after serving only 311 days. See id. at

1268-69.

This court agrees with the reasoning of the Ninth Circuit. The statute clearly states that an inmate may receive up to 54 days of good time credit after each year of the term of imprisonment. The reference to this annual determination, required that the award be made each year. The records provided by the respondent reveal that Webb has been credited with the full 54 days for each year of her sentence completed thus far. The projections assume that Webb will continue to receive the full amount each year.

In her argument, Webb fails to acknowledge that with each annual award of good time credit, her release date is adjusted. The statute requires that the credit be applied to the portion of the sentence yet to be served. See 18 U.S.C. § 3624(b)(1) ("credit toward the service of the prisoner's sentence, beyond the time served"). To date, she has been awarded 324 days, or nearly eleven months, of good time credit. That time is subtracted from Webb's release date. Because she will not be incarcerated for that eleven months, she will not be eligible to earn good time credit for that period. She cannot receive good time credit for time she did not serve. See Williams v. Lamanna, 2001 WL 1136069 (6th Cir. Sept. 19, 2001) (Section 3624(b)(1) "clearly states that good conduct time is awarded on time served by the inmate, and not on the time that might potentially be served by the inmate"). The court concludes that the BOP's

method of calculation of good time credit is consistent with and a reasonable interpretation of the statute.

Conclusion

The petition for writ of habeas corpus [doc. #1] is **DENIED.**

The court determines that no question of substance is presented for appellate review. Thus a certificate of appealability is denied.

SO ORDERED.

Dated at New Haven, Connecticut this 18th day of September, 2003.

Peter C. Dorsey
United States District Judge

EXHIBIT 5

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

GERALD DE GEROLAMO, :
: Civil Action No. 03-139 (FLW)
Petitioner, :
:
v. : **OPINION**
:
K.M. WHITE, WARDEN, :
:
Respondent. :

APPEARANCES:

Gerald DeGerolamo, Petitioner pro se
F.C.I. Fairton
#80457-054
P.O. Box 420
Fairton, NJ 08320

Louis J. Bizzarri, Assistant United States Attorney
Camden Federal Building
401 Market Street
P.O. Box 1427
Camden, NJ 08101
Attorney for Respondent

WOLFSON, District Judge

Petitioner Gerald DeGerolamo ("DeGerolamo"), a prisoner currently confined at the Federal Correctional Institution at Fairton, New Jersey, has submitted a petition for a writ of

habeas corpus pursuant to 28 U.S.C. § 2241.[1] The sole respondent is Warden K.M. White.

For the reasons stated herein, the Petition must be denied.

I. BACKGROUND

Petitioner DeGerolamo is currently serving an aggregate 160-month (13 years, 4 months) sentence imposed by the United States District Court for the Southern District of New York in three separate convictions on April 9, 1991, and June 23, 1994.[2] (Petition ¶ 4.1; Answer at 2, 4-5.) The Bureau of Prisons ("BOP") has calculated Petitioner's sentence, according to 18 U.S.C. § 3624(b)(1) and BOP Program Statement 5880.28, to reflect a potential maximum award of 603 days of good time credit,[3] and

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[1] Section 2241 provides in relevant part:
(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions.
(c) The writ of habeas corpus shall not extend to a prisoner unless-- ... (3) He is in custody in violation of the Constitution or laws or treaties of the United States ... .

[2] Petitioner was on escape status from March 7, 1992 through April 3, 1993. (Answer at 4.)

[3] Petitioner has been awarded 54 days of good time credit for each full year served on his sentence, beginning January 28, 1991, (the date Petitioner was taken into custody in presentence status), with the exception of the year ended February 24, 1994, (during which he was on escape status), for which year he was awarded 27 days credit, a total of 567 days. It is projected that if no good time credit is disallowed or forfeited between February 24, 2003, and the end of his sentence, Petitioner will be awarded an additional 36 days of good time credit. (Answer at 6-9.)

has projected a release date of October 31, 2003, if all such good time credits are awarded. (Pet. ¶ 4.5; Answer at 3.)

Petitioner contends that the BOP's interpretation of § 3624(b)(1) is contrary to the unambiguous intent of Congress and is depriving him of good time credits that should be awarded under the statute. (Pet. ¶¶ 5.1 - 5.5.) Petitioner contends that the BOP erroneously calculates the good time credits based upon time served, rather than upon the sentence as imposed. (Pet. ¶ 4.4.) He contends that he is entitled to earn a maximum of 718 days good time credit (54 days per year times 13 and 1/3 years),[4] based upon the sentence imposed. He asks this Court to order the Bureau of Prisons to recalculate his good time credits according to what he asserts is the correct interpretation of the statute.

II. ANALYSIS

As of the time of Petitioner's imprisonment, 18 U.S.C. § 3624(b) provided:

> A prisoner who is serving a term of imprisonment of more than one year, other than a term of imprisonment for the duration of his life, shall receive credit toward the service of his sentence, beyond the time served, of fifty-four days at the end of each year of his term of imprisonment, beginning at the end of the first year of the term, unless the Bureau of Prisons determines that, during that year, he has not satisfactorily complied with such institutional disciplinary regulations as have been approved by the

[4] Fifty-four days/year times 13 years 4 months actually yields 720 days.

> Attorney General and issued to the prisoner. If the Bureau determines that, during that year, the prisoner has not satisfactorily complied with such institutional regulations, he shall receive no such credit toward service of his sentence or shall receive such lesser credit as the Bureau determines to be appropriate. The Bureau's determination shall be made within fifteen days after the end of each year of the sentence. Such credit toward service of sentence vests at the time that it is received. Credit that has vested may not later be withdrawn, and credit that has not been earned may not later be granted. Credit for the last year or portion of a year of the term of imprisonment shall be prorated and credited within the last six weeks of the sentence.

18 U.S.C. § 3624(b).[5]

The Bureau of Prisons has codified its interpretation of § 3624(b) at 28 C.F.R. § 523.20.

> Pursuant to 18 U.S.C. 3624(b), as in effect for offenses committed on or after November 1, 1987 but before April 26, 1996, an inmate earns 54 days credit toward service of sentence (good conduct time credit) for each year served. This amount is prorated when the time served by the inmate for the sentence during the year is less than a full year. The amount to be awarded is also subject to disciplinary allowance . . . .
> . . .

This interpretation is implemented through BOP Program Statement ("P.S.") 5880.28. (Answer, Decl. of Joyce Horikawa, Ex. E.) The Bureau of Prisons has determined that "54 days of GCT [("good conduct time")] may be earned for each full year served on a

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[5] Section 3624(b) has since been amended to provide that credits awarded after the date of enactment (April 26, 1996) of the Prison Litigation Reform Act (Title VII of Pub. L. 104-134) shall vest on the date the prisoner is released from custody," 18 U.S.C. § 3624(b)(2), and that "Credit that has not been earned may not later be granted," 18 U.S.C. § 3624(b)(1).

sentence in excess of one year," P.S. 5880.28(g), and has derived a formula to calculate the amount of GCT that may be earned for any fractional year served on a sentence in excess of one year.

> For release purposes, subsection 3624(b) is the most important provision in the computation process since the proper application of that subsection determines the actual statutory date of release for the prisoner. The release date is determined, of course, by subtracting the total amount of GCT awarded during the term of the sentence from the full time date of the sentence. The total amount of GCT awarded during the term of a sentence is found by adding the amount of GCT awarded at the end of each year to the amount of GCT awarded for the last portion of a year.
>
> As noted in (1) above, 54 days of GCT may be awarded for each full year served on a sentence in excess of one year. Since 54 days of GCT per year cannot be divided evenly into one year, or 12 months, or 52 weeks, or 365 days, determining the amount of GCT that may be awarded for the last portion of a year on the sentence becomes arithmetically complicated. The BOP has developed a formula (hereinafter called the "GCT formula") that best conforms to the statute when calculating the maximum number of days that may be awarded for the time served during the last portion of a year on the sentence.
>
> The GCT formula is based on dividing 54 days (the maximum number of days that can be awarded for one year in service of a sentence) into one day which results in the portion of one day of GCT that may be awarded for one day served on a sentence. 365 days divided into 54 days equals .148. Since .148 is less than one full day, no GCT can be awarded for one day served on the sentence. Two days of service on a sentence equals .296 (2 x .148) or zero days GCT; ... seven days equals 1.036 (7 x .148) or 1 day GCT. The fraction is always dropped.
>
> ...
>
> It is essential to learn that GCT is not awarded on the basis of the length of the sentence imposed, but rather on the number of days actually served. In other

> words, when the GCT awarded plus the number of days actually served equals the days remaining on the sentence, then the prisoner shall be released on the date arrived at in the computation process. (days remaining on sentence - (GCT + days served) = release date). ...

P.S. 5880.28(g), Sentence Computation Manual CCCA, at 1-40 through 1-45 (Answer, Decl. of Joyce Horikawa, Ex. E.).

A. Exhaustion of Administrative Remedies

Respondent asks this Court to dismiss the Petition because Petitioner has failed to exhaust his administrative remedies.[6] (Answer at 10-12.) Petitioner does not deny his failure to exhaust administrative remedies, but contends that such exhaustion is not a jurisdictional bar and would be futile, in that he challenges the validity of the Bureau of Prisons' interpretation of § 3624. (Traverse.)

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[6] The BOP Administrative Remedy Program is a three-tier process that is available to inmates confined in institutions operated by the BOP for "review of an issue which relates to any aspect of their confinement." 28 C.F.R. § 542.10. An inmate must initially attempt to informally resolve the issue with institutional staff. 28 C.F.R. § 542.13(a). If informal resolution fails or is waived, an inmate may submit a BP-9 Request to "the institution staff member designated to receive such Requests (ordinarily a correctional counsel)" within 20 days of the date on which the basis for the Request occurred, or within any extension permitted. 28 C.F.R. § 542.14. An inmate who is dissatisfied with the Warden's response to his BP-9 Request may submit a BP-10 Appeal to the Regional Director of the BOP within 20 days of the date the Warden signed the response. 28 C.F.R. § 542.15(a). The inmate may appeal to the BOP's General Counsel on a BP-11 form within 30 days of the day the Regional Director signed the response. Id. Appeal to the General Counsel is the final administrative appeal. Id.

Although 28 U.S.C. § 2241 contains no statutory exhaustion requirement, a federal prisoner ordinarily may not bring a petition for writ of habeas corpus under 28 U.S.C. § 2241, challenging the execution of his sentence, until he has exhausted all available administrative remedies. See, e.g., Callwood v. Enos, 230 F.3d 627, 634 (3d Cir. 2000); Arias v. United States Parole Comm'n, 648 F.2d 196, 199 (3d Cir. 1981); Soyka v. Alldredge, 481 F.2d 303, 306 (3d Cir. 1973). The exhaustion doctrine promotes a number of goals:

> (1) allowing the appropriate agency to develop a factual record and apply its expertise facilitates judicial review; (2) permitting agencies to grant the relief requested conserves judicial resources; and (3) providing agencies the opportunity to correct their own errors fosters administrative autonomy.

Goldberg v. Beeler, 82 F.Supp.2d 302, 309 (D.N.J. 1999), aff'd, 248 F.3d 1130 (3d Cir. 2000). See also Moscato v. Federal Bureau of Prisons, 98 F.3d 757, 761 (3d Cir. 1996). Nevertheless, exhaustion of administrative remedies is not required where exhaustion would not promote these goals. See, e.g., Gambino v. Morris, 134 F.3d 156, 171 (3d Cir. 1998) (exhaustion not required where petitioner demonstrates futility); Lyons v. U.S. Marshals, 840 F.2d 202, 205 (3d Cir. 1988) (exhaustion may be excused where it "would be futile, if the actions of the agency clearly and unambiguously violate statutory or constitutional rights, or if the administrative procedure is clearly shown to be inadequate to prevent irreparable harm"); Carling v. Peters, 2000 WL 1022959,

*2 (E.D. Pa. 2000) (exhaustion not required where delay would subject petitioner to "irreparable injury").

Here, there is no need to develop a factual record, nor does this matter require application of the agency's particular expertise. Petitioner does not challenge the application of the agency's regulations to him, but challenges whether the regulation and Program Statement accurately implement the statute pursuant to which they were promulgated. This is a question within the expertise of courts. See Chevron, U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 843 n.9 (1984) ("The judiciary is the final authority on issues of statutory construction and must reject administrative constructions which are contrary to clear congressional intent."). Accordingly, the purposes of the exhaustion requirement would not be served by requiring the Petitioner to exhaust his administrative remedies, and this Court will proceed to determine Petitioner's claim on the merits.

B. The Good Conduct Time Credits

Respondent contends that § 3624 is unambiguous, and the Bureau of Prisons has correctly interpreted the statute and, to the extent the statute can be construed as silent or ambiguous as to the basis for GCT, the Bureau of Prisons' interpretation is reasonable and entitled to deference under the rule of Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S.

837, 842-43 (1984). (Answer at 18-24.) This Court agrees with Respondent.

> When a court reviews an agency's construction of the statute which it administers, it is confronted with two questions. First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the courts, as well as the agency, must give effect to the unambiguously expressed intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.

Chevron, 467 U.S. at 842-43 (footnotes omitted).

Two Circuit Courts of Appeals have addressed the statutory-construction issue presented here by Petitioner. In Williams v. LaManna, 20 Fed.Appx. 360, 361, 2001 WL 1136069 (6th Cir. Sept. 19, 2001) (unpubl.), the Court of Appeals for the Sixth Circuit held that "[t]he statute clearly states that good conduct time is awarded on time served by the inmate, not on the time that might potentially be served by the inmate."

The Court of Appeals for the Ninth Circuit did not find the language so clear. "In this case, the words of the statute do not provide clear guidance as to what the phrase 'term of imprisonment' means." Pacheco-Camacho v. Hood, 272 F.3d 1266, 1268 (9th Cir. 2001) (involving a claim by a prisoner sentenced to a term of imprisonment of one year and one day), cert. denied,

535 U.S. 1105 (2002). The Court further held that the legislative history did nothing to remove that ambiguity. Id. at 1269. Proceeding to the second step of the Chevron analysis, the Court found that the language granting the BOP authority to award or withhold good time credits and providing for proration of the credit for the last year or portion of a year implicitly charged the Bureau of Prisons with implementation of the proration scheme. Id. at 1270. The Court held that the agency's interpretation of the statute and proration formula were reasonable, and entitled to deference, in that they prevent prisoners from receiving a windfall, in the form of full credit for time they do not serve, and they enable prisoners to estimate with certainty the time of their release. Id. at 1268-71.

Finally, the court rejected the prisoner's suggestion that his interpretation of the statute should be preferred because of the rule of lenity, which "ensures that the penal laws will be sufficiently clear, so that individuals do not accidentally run afoul of them and courts do not impose prohibitions greater than the legislature intended." Id. at 1271 (citing United States v. Bass, 404 U.S. 336, 347-48 (1971)). The court noted that the rule of lenity does not prevent an agency from resolving statutory ambiguity through regulation, id. (citing Babbitt v. Sweet Home Chapter of Communities for a Great Oregon, 515 U.S. 687, 705 n.18 (1995)), and held that the BOP's regulation "gives

the public sufficient warning to ensure that nobody mistakes the ambit of the law or its penalties," id. at 1272.

This Court is of the opinion that the language of the statute is not ambiguous and that the BOP regulation and Program Statement correctly interpret and implement the statute. The statute specifically contemplates the award of GCT credit incrementally, in the amount of a maximum of 54 days at the end of each year of the term, and in an amount proportionately less than 54 days for any fractional portion of a year left at the end of the term, taking into account the reductions that have been made incrementally at annual intervals. This is the scheme employed by the Bureau of Prisons and applied here to Petitioner. To the extent the language of the statute could be deemed ambiguous, this Court adopts the reasoning of the Court of Appeals for the Ninth Circuit in Pacheco-Camacho.

III. CONCLUSION

For the reasons set forth above, the Petition must be denied. An appropriate order follows.

Freda L. Wolfson
United States District Judge

Dated: May 20, 2003

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

GERALD DE GEROLAMO,	:	
		Civil Action No. 03-139 (FLW)
Petitioner,	:	
v.	:	**ORDER**
K.M. WHITE, WARDEN,	:	
Respondent.	:	

For the reasons set forth in the Opinion filed herewith,

IT IS on this 20th day of May, 2003,

ORDERED that the Petition is DENIED.

FILED

MAY 20 2003

AT 8:30
WILLIAM T. WALSH

Freda L. Wolfson
United States District Judge

ENTERED
ON
THE DOCKET

MAY 20 2003

WILLIAM T. WALSH, CLERK
By (Deputy Clerk)

EXHIBIT 6

U.S. Department of Justice
Federal Bureau of Prisons

Change Notice

DIRECTIVE AFFECTED: 7310.04
CHANGE NOTICE NUMBER: 7310.04
DATE: 12/16/98

1. PURPOSE AND SCOPE. To reissue the Program Statement on **Community Corrections Center (CCC) Utilization and Transfer Procedures**.

2. SUMMARY OF CHANGES. This reissuance incorporates text consistent with the recently issued Program Statement on Categorization of Offenses. In addition, text and procedural improvements recommended by field and Regional Office staff have also been incorporated. These changes are summarized below:

- Incorporates recommendations made by the Mothers and Infants Together (MINT) workgroup;
- Allows inmates who are otherwise eligible for camp placement to be transferred to a camp prior to transfer to a CCC; and,
- Eliminates the possibility of "stacking" time in a halfway house by combining Bureau referral placement with public law or supervised release placement.

3. ACTION. File this Change Notice in front of the Program Statement on **Community Corrections Center (CCC) Utilization and Transfer Procedure**.

/s/
Kathleen Hawk Sawyer
Director

U.S. Department of Justice
Federal Bureau of Prisons

Program Statement

OPI: CPD
NUMBER: 7310.04
DATE: 12/16/98
SUBJECT: Community Corrections Center (CCC) Utilization and Transfer Procedure

1. PURPOSE AND SCOPE. To provide guidelines to staff regarding the effective use of Community Corrections Centers (CCCs). This Program Statement defines placement criteria for offenders, requires that staff members start the placement process in a timely manner, and defines the circumstances when inmates may refuse Community Corrections (CC) programs. It also establishes an operational philosophy for CCC referrals that, whenever possible, eligible inmates are to be released to the community through a CCC unless there is some impediment as outlined herein.

CCCs provide an excellent transitional environment for inmates nearing the end of their sentences. The level of structure and supervision assures accountability and program opportunities in employment counseling and placement, substance abuse, and daily life skills.

One reason for referring an inmate to a CCC is to increase public protection by aiding the transition of the offender into the community. Participating in community-based transitional services may reduce the likelihood of an inmate with limited resources from recidivating, whereas an inmate who is released directly from the institution to the community may return to a criminal lifestyle. While clearly dangerous inmates should be separated from the community until completing their sentences, other eligible inmates should generally be referred to CCCs to maximize the chances of successful reintegration into society.

Finally, the scope of this Program Statement has been extended to include CCC consideration/placement of District of Columbia Department of Corrections inmates.

2. PROGRAM OBJECTIVES. The expected results of this program are:

a. All eligible inmates will have opportunities to participate in CCC programs to assist with their reintegration into the community, in accordance with their release needs.

b. All inmates will have opportunities to communicate directly with staff who make significant CCC referral recommendations.

c. Referral packets for CCC placement will be timely and complete.

d. Before any inmate is transferred to a CCC, the CCC staff will have the required notice and other documentation.

e. The public will be protected from undue risk.

3. DIRECTIVES AFFECTED

a. Directive Rescinded

PS 7310.03	Community Corrections Center (CCC) Utilization and Transfer Procedures (3/25/96)

b. Directives Referenced

PS 1434.06	Jurisdiction on Escape Related Issues - Memorandum of Understanding USMS/FBI/BOP (7/25/94)
PS 1490.04	Victim and Witness Notification (2/3/98)
PS 5100.06	Security Designation and Custody Classification Manual (6/7/96)
PS 5110.12	Notifications of Release to State and Local Law Enforcement Officials (1/21/98)
PS 5180.04	Central Inmate Monitoring System (8/16/96)
PS 5250.01	Public Works and Community Service Projects (1/19/93)
PS 5264.06	Telephone Regulations for Inmates (12/22/95)
PS 5280.08	Furloughs (2/4/98)
PS 5322.10	Classification and Program Review of Inmates (9/4/96)
PS 5325.05	Release Preparation Program, Institution (7/18/96)
PS 5330.10	Drug Abuse Programs Manual, Inmate (5/25/95)
PS 5380.05	Financial Responsibility Program, Inmate (12/22/95)

PS 5550.05	Escape from Extended Limits of Confinement (3/27/96)
PS 5553.05	Escapes/Deaths Notification (9/17/97)
PS 5800.07	Inmate Systems Management Manual (12/24/91)
PS 5800.11	Central File, Privacy Folder, and Parole Mini File (9/7/97)
PS 5873.05	Release Gratuities, Transportation, and Clothing (9/4/96)
PS 5882.03	Fines and Costs (2/4/98)
PS 6000.05	Health Services Manual (9/15/96)
PS 6070.05	Birth Control, Pregnancy, Child Placement, and Abortion (8/9/96)
PS 7300.09	Community Corrections Manual (1/12/98)
PS 7320.01	Home Confinement (9/6/95)
PS 7331.03	Pretrial Inmates (11/22/94)
PS 7430.01	Community Transitional Drug Treatment Services, Inmate (1/20/95)

18 U.S.C. § 3621(b)
18 U.S.C. § 3624(c)

4. STANDARDS REFERENCED

a. American Correctional Association 3rd Edition Standards for Adult Correctional Institutions: 3-4265, 3-4343, 3-4343-1, 3-4387, 3-4388, 3-4388-2, 3-4389, 3-4391, 3-4393, 3-4393-1

b. American Correctional Association 3rd Edition Standards for Adult Local Detention Facilities: 3-ALDF-3E-04, 3-ALDF-4E-19, 3-ALDF-4E-19-1, 3-ALDF-4F-04, 3-ALDF-4F-05, 3-ALDF-4F-07, 3-ALDF-4G-01, 3-ALDF-4G-06, 3-ALDF-4G-07

c. American Correctional Association 2nd Edition Standards for Administration of Correctional Agencies: 2-CO-4G-01, 2-CO-4G-02

d. American Correctional Association Standards for Adult Correctional Boot Camp Programs: 1-ABC-3D-04, 1-ABC-4E-20, 1-ABC-4F-08, 1-ABC-4F-10, 1-ABC-4G-01, 1-ABC-4G-02, 1-ABC-4G-03, 1-ABC-4G-06

5. STATUTORY AUTHORITY. 18 U.S.C. § 3624(c), provides:

> "The Bureau of Prisons shall, to the extent practicable, assure that a prisoner serving a term of imprisonment spends a reasonable part, not to exceed six months, of the last ten per centum of the term to be served under conditions that will afford the prisoner a reasonable opportunity to adjust

to and prepare for the prisoner's reentry into the community. The authority provided by this subsection may be used to place a prisoner in home confinement. The United States Probation Office shall, to the extent practicable, offer assistance to a prisoner during such pre-release custody."

18 U.S.C. § 3621(b) provides:

"The Bureau of Prisons shall designate the place of the prisoner's imprisonment. The Bureau may designate any available penal or correctional facility . . . the Bureau determines to be appropriate and suitable." A CCC meets the definition of a "penal or correctional facility."

Therefore, the Bureau is not restricted by § 3624(c) in designating a CCC for an inmate and may place an inmate in a CCC for more than the "last ten per centum of the term," or more than six months, if appropriate.

Section 3624(c), however, does restrict the Bureau in placing inmates on home confinement to the last six months or 10% of the sentence, whichever is less.

6. PRETRIAL/HOLDOVER AND/OR DETAINEE INMATES. This Program Statement does not apply to pretrial, holdover, or detainee inmates.

7. COMMUNITY-BASED PROGRAMS

a. Community Corrections Centers (CCC). CCCs, commonly referred to as "halfway houses," provide suitable residence, structured programs, job placement, and counseling, while the inmates' activities are closely monitored. All CCCs offer drug testing and counseling for alcohol and drug-related problems. During their stay, inmates are required to pay a subsistence charge to help defray the cost of their confinement; this charge is 25% of their gross income, not to exceed the average daily cost of their CCC placements. Failure to make subsistence payments may result in disciplinary action.

These contract facilities, located throughout the United States, provide two program components: the Community Corrections Component and the Prerelease Component:

(1) The Community Corrections Component is designed as the most restrictive option. Except for employment and other structured program activities, an inmate in this component is

restricted to the CCC. An inmate shall ordinarily be placed in the Community Corrections Component upon arrival at the CCC.

This orientation period normally lasts for two weeks or until the inmate has demonstrated to CCC staff the responsibility necessary to function in the community. Based on their professional judgment, CCC staff shall determine when an inmate is prepared to advance to the Prerelease Component.

(2) The Prerelease Component is designed to assist inmates making the transition from an institution setting to the community. These inmates have more access to the community and family members through weekend and evening passes.

b. Community Corrections Programs. In addition to a CCC's traditional services, the Bureau also has the following community-based programs. Referral procedures may be described in independent Bureau directives issuances. The Community Corrections Manager (CCM) reviews the inmate's characteristics and the recommendations noted in the referral package to determine if one of the following programs (if available) may be more appropriate than traditional CCC placement.

(1) Comprehensive Sanctions Center (CSC). The CSC concept, initiated by the Bureau, with the extensive cooperation and teamwork of U.S. Probation and CCC contractors, was developed to provide courts with a wider range of sentencing options and to facilitate the development and implementation of community program plans tailored to the individual needs of prerelease inmates.

The CSC is designed to meet the needs of higher risk prerelease inmates and consists of six different levels of supervision, ranging from 24-hour confinement to Home Confinement.

It also may have an intensive treatment component consisting of substance abuse education and treatment, life skills training, mental health counseling, education, employment assistance, and mentoring. The inmate's progress is systematically reviewed by a Program Review Team (PRT), consisting of representatives from the Bureau, U.S. Probation, and the CCC.

(2) Mothers and Infants Together (MINT). MINT is an alternative residential program that promotes bonding and parenting skills for low risk female inmates who are pregnant. The inmate is placed in the program two months prior to delivery and remains there for three months after delivery.